

ORIGINAL

No. 81939-4

IN THE WASHINGTON STATE SUPREME COURT

In re the Personal Restraint of:

JAMES EASTMOND,

Petitioner.

PETITIONER'S SUPPLEMENTAL BRIEF

By:

Suzanne Lee Elliott
Attorney for Petitioner
1300 Hoge Building
705 Second Avenue
Seattle, WA 98104
(206) 623-0291

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A. SUPPLEMENTAL STATEMENT OF THE CASE

In 2000 James Eastmond was charged with one count of first-degree robbery and one count of first-degree burglary. Appendix 1 to PRP, Amended Information filed August 14, 2000. As to each count, the Amended Information stated:

. . . in the commission of said crime and in immediate flight therefrom, the defendant or an accomplice was armed with a deadly weapon; and that at the time of the commission of the crime, the defendant or an accomplice was armed with a firearm, as provided and defined in RCW 9.94A.310, RCW 9.41.010, and RCW 9.94A.125 . . .

Id.

The jury instructions told the jury that:

The term “deadly weapon” includes any firearm, whether loaded or not.

Appendix 3 to PRP, Instruction 12.

For purposes of a special verdict the State must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon at the time of the commission of the crime in Counts I and II.

A pistol, revolver, or any other firearm is a deadly weapon whether loaded or unloaded.

Appendix 3 to PRP, Instruction 15.

The Special Verdict forms asked the jury to determine whether the defendant “was armed with a deadly weapon” at the time he committed the offenses. Appendix 4 to PRP, Special Verdict Forms. The jury

convicted Eastmond as charged and answered “yes” on the special verdict form questions.

B. SUPPLEMENTAL ARGUMENT

1. *THE DECISION IN STATE V. WILLIAMS-WALKER¹ REQUIRES REVERSAL OF THE FIREARM ENHANCEMENTS IN THIS CASE*

The facts of the consolidated cases in *State v. Williams-Walker*, *supra*, are virtually identical to the facts in this case.

In each of the three cases here, the court submitted to the jury the special verdict form for a deadly weapon enhancement, not the form for a firearm enhancement, which was originally alleged, and the jury returned answers to those deadly weapon special verdict forms. In each case, the jury thus authorized only a deadly weapon enhancement, not the more severe firearm enhancement.

Id. at 888.

Based upon those facts, this Court found:

In the cases before us, the juries were given special verdict forms for a deadly weapon enhancement, and they returned answers in the affirmative. The fact that the State provided notice in the information to each of the defendants that it would seek a firearm enhancement does not control in cases where a deadly weapon special verdict form is submitted to the jury. When the jury is instructed on a specific enhancement and makes its finding, the sentencing judge is bound by the jury’s finding.

¹ *State v. Williams-Walker*, 167 Wn.2d 889, 225 P.3d 913 (2010).

Id. at 889. This Court also held that because the trial courts' errors occurred after the jury verdicts were reached, the harmless error doctrine does not apply. *Id.* at 900.

This Court's decision *Williams-Walker* requires reversal of the firearm enhancements in this case.

Eastmond was detained on these charges beginning May 22, 2000. The court imposed 36 months for the underlying substantive offenses and 120 months for the firearms' enhancements, for a total of 156 months. The proper sentence is 36 months plus 48 months (Former RCW 9.9A.310(4)), for a total of 84 months. Because Mr. Eastmond has served 123 months, he should be released immediately.²

2. *THERE IS NO ISSUE OF "RETROACTIVE" APPLICATION OF ANY NEW RULE OF LAW IN THIS CASE*

Generally, this Court has followed the lead of the United States Supreme Court when deciding whether to give retroactive application to newly articulated principles of law. *See State v. Evans*, 154 Wn.2d 438, 443, 114 P.3d 627, *cert. denied*, 546 U.S. 983, 126 S.Ct. 560, 163 L.Ed.2d

² On or around June 20, 2010, Mr. Eastmond suffered a series of very damaging seizures. He was moved to an outside hospital where he also suffered cardiac arrest, kidney failure and was on dialysis and a ventilator before his release 4 weeks later. He recovered somewhat and has been returned to the prison.

472 (2005); *In re Pers. Restraint of Markel*, 154 Wn.2d 262, 268, 111 P.3d 249 (2005) (citing *In re Pers. Restraint of Sauve*, 103 Wn.2d 322, 328, 692 P.2d 818 (1985)).

The Washington retroactivity analysis, adopted from *Teague v. Lane*, 489 U.S. 288, 311, 109 S.Ct. 1060, 103 L.Ed.2d 334, *rehearing denied*, 490 U.S. 1031, 109 S.Ct. 1771, 104 L.Ed.2d 206 (1989), was summarized in *In Re Pers. Restraint of St. Pierre*, 118 Wn.2d 321, 823 P.2d 492 (1992), as follows:

First, a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final, with no exception for cases in which the new rule constitutes a clear break from the past.

Second, a new rule will not be given retroactive application to cases on collateral review except where either: (a) the new rule places certain kinds of primary, private individual conduct beyond the power of the state to proscribe, or (b) the rule requires the observance of procedures implicit in the concept of ordered liberty.

The *Teague* inquiry is conducted in three steps. First, the date on which the defendant's conviction became final is determined. *Lambrix v. Singletary*, 520 U.S. 518, 527, 117 S.Ct. 1517, 137 L.Ed.2d 771 (1997). Next, the habeas court considers whether ““a state court considering [the

defendant's] claim at the time his conviction became final would have felt compelled by existing precedent to conclude that the rule [he] seeks was required by the Constitution.'" *Ibid.* (quoting *Saffle v. Parks*, 494 U.S. 484, 488, 110 S.Ct. 1257, 108 L.Ed.2d 415 (1990) (alterations in *Lambrix*)). If not, then the rule is new.³

If the rule is determined to be new, the final step in the *Teague* analysis requires the court to determine whether the rule nonetheless falls within one of the two narrow exceptions to the *Teague* doctrine. *Teague*, 520 U.S. at 527. But, because the *Williams-Walker* decision is not "new" as to Eastmond, these exceptions do not apply in this case.

The State points out that the judgment in this case was not final until December 31, 2007. The State takes the simplistic position that because *Williams-Walker* was not decided until January 14, 2010, the rule is "new" as to Eastmond. But the State fails to analyze whether a Washington Court would have felt compelled by existing precedent to conclude that the result Eastmond seeks now was required by the

³ Contrary to the suggestion in the State's brief, the Supreme Court does not presume that a non-unanimous decision by the Supreme Court necessarily establishes a "new rule" of law. *Beard v. Banks*, 542 U.S. 406, 416 n.5, 124 S.Ct. 2504, 147 L.Ed.2d 435 (2004) ("Because the focus of the inquiry is whether *reasonable* jurists could differ as to whether precedent compels the sought-for rule, we do not suggest that the mere existence of a dissent suffices to show that the rule is new." (emphasis in original)).

Constitution before the judgment was final. The State's argument then is vitiated by the State's own affirmation that:

The new rule announced in *Williams-Walker* was based in large part on the holding of *Apprendi*⁴ and *Blakely*⁵.

State's Supplemental Brief, filed August 2, 2010, at page 5.

Because that is true, the application of *Williams-Walker* to Eastmond cannot be a "new" rule. And, in fact, Eastmond did make this very claim based upon *Apprendi* and *Blakely* while his case was on direct appeal. See Exhibit 1, Supplemental Brief of Appellant in Support of his Petition for Review, May 3, 2005, *State v. Eastmond*, No. 76777-7. He argued that his case was governed by the "rules" announced in *Apprendi*, decided in 2000 and *Blakely*, decided in 2004. In that brief, he pointed out that, because his conviction was not "final" under RAP 12.7, he was entitled to relief even at that late stage of the appeal process. See *State v. Hanson*, 151 Wn.2d 783, 91 P.3d 888 (2004). Inexplicably, this Court denied review.

Because Eastmond's claim is virtually identical Williams-Walker's claim and *Apprendi* and *Blakely* compelled the result in *Williams-Walker*,

⁴ *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000).

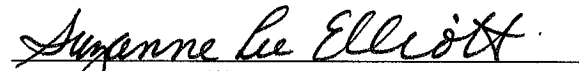
⁵ *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403, *rehearing denied*, 542 U.S. 961, 125 S.Ct. 21, 159 L.Ed.2d 851 (2004).

and Eastmond raised the claim on direct appeal citing *Apprendi* and *Blakely*, the rule is not “new” as to him.⁶

C. CONCLUSION

This Court should grant review, summarily reverse, order Eastmond’s immediate release and remand to the trial court for resentencing.

Respectfully submitted this 8th day of April, 2011.


Suzanne Lee Elliott, WSBA 12634
Attorney for James Eastmond

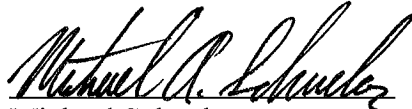
⁶ *State v. Evans*, 154 Wn.2d 438, 444, 144 P.3d 627, *cert. denied*, 546 U.S. 983, 126 S.Ct. 560, 163 L.Ed.2d 472 (2005), involved the application of *Apprendi* and *Blakely* to two defendants whose convictions became final in 1991 and 1999.

Certificate of Service by Mail

I declare under penalty of perjury that on April 8, 2011, I placed a copy of the foregoing document in the U.S. Mail, postage prepaid, to:

Mr. Thomas Curtis
Snohomish County Deputy Prosecutor
3000 Rockefeller Avenue, M/S 504
Everett, WA 98201-4060

Mr. James Eastmond #821591
Monroe Correctional Complex
Twin Rivers Unit
PO Box 888
Monroe, WA 98272


Michael Schueler

No. 76777-7

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JAMES EASTMOND

Appellant.

SUPPLEMENTAL BRIEF OF APPELLANT

Suzanne Lee Elliott
Attorney for Appellant
Suite 1300 Hoge Building
705 Second Ave.
Seattle, WA 98104

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A. SUPPLEMENTAL STATEMENT OF THE CASE

On November 17, 2000 a jury found Eastmond guilty of one count of first degree burglary and one count of first degree robbery. See Appendix 1. The jury also found as to each count that Eastmond was “armed with a deadly weapon.” See Appendix 2. Despite the fact that the jury found him guilty only of using a “deadly weapon,” the trial judge imposed two 60 month “firearm” enhancements. See Appendix 3.

Irregardless of what this Court does with the other issues in Eastmond’s petition for review filed March 5, 2005, this Court must reverse the sentence imposed and remand for resentencing pursuant to this Court’s recent decision in State v. Recuenco, - Wash. 2nd -, - P.3rd – (Slip Opinion filed April 14, 2005).

B. ISSUES PRESENTED

1. Where the jury found only that Eastmond was “armed with a deadly weapon” did the sentencing judge violate Mr. Eastmond’s Sixth and Fourteenth Amendment rights by entering greater sentences based upon his conclusion that Mr. Eastmond was actually armed with a “firearm”?

C. ARGUMENT

1. CASES DECIDED AFTER THE VERDICT IN THIS CASE AND AFTER THE DECISION OF THE COURT OF APPEALS, BUT WHILE

*EASTMOND'S APPEAL OF RIGHT WAS STILL PENDING, MANDATE
RESENTENCING IN THIS CASE.*

The Sixth Amendment guarantees a criminal defendant the right to a jury trial. Appendi v. New Jersey, 530 U.S. 466, 476-77, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). This right includes the right to "a jury determination that [he] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." Id., quoting United States v. Gaudin, 515 U.S. 506, 510, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995). The Sixth Amendment does not allow a defendant to be "expose[d] . . . to a penalty *exceeding* the maximum he would receive if punished according to the facts reflected in the jury verdict alone." (Emphasis in original) Appendi, 503 U.S. at 483, see also Ring v. Arizona, 536 U.S. 584, 604, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002). Additionally, the Due Process Clause of the Fourteenth Amendment compels any fact which increases a sentence to a term beyond the maximum be formally pleaded, submitted to a jury, and proven beyond a reasonable doubt. See Specht v. Patterson, 386 U.S. 605, 609-11, 87 S.Ct. 1209, 18 L.Ed.2d 326 (1967). The United States Supreme Court has noted:

[I]t is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. It is equally clear that such facts must be established by proof beyond a reasonable doubt.

Apprendi, 530 U.S. at 490 (quoting Jones v. United States, 526 U.S. 227, 252-53, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999) (opinion of Stevens, J.)).

A sentencing court's ability to impose a sentence is limited to the maximum for that offense reflected in the jury verdict alone. Blakely v. Washington, __ U.S. __, 124 S.Ct. 2531, 2537, __ L.Ed.2d __ (2004). Blakely held

the relevant "statutory maximum" is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose *without* any additional findings. When a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts "which the law makes essential to punishment."

(Italics in original.) Id., citing, 1 J. Bishop, Criminal Procedure, § 87, p.55 (2d ed. 1872)).

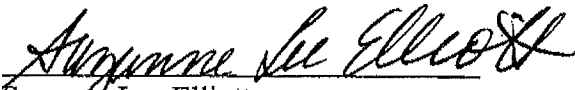
In Recuenco, supra this Court held that where the jury did not explicitly find that the defendant was armed with a firearm, the court's imposition of a firearm sentence enhancement violates a defendant's jury trial right as defined by Apprendi and Blakely because the sentence is greater than that allowed solely based on the facts found by the jury. The Court also found that previous Washington cases that held otherwise were no longer good law in light of Blakely. This Court also found that such constitutional violations can never be harmless. Because the jury's verdicts in this case found Mr. Eastmond guilty only of deadly weapons enhancements, he is entitled to resentencing under the Recuenco decision.

Moreover, any new decision on this issue applies to all cases, like this one, not yet final under RAP 12.7. State v. Hanson, 151 Wash. 2nd 783, 91 P.3rd 888 (2004) affirming In re Personal Restraint of St. Pierre, 118 Wn.2d 321, 823 P.2d 492 (1992).

D. CONCLUSION

For the reasons set forth above, this Court must reverse and remand for entry of sentences on each count that include only the enhancement for a deadly weapon.

Respectfully submitted this 3rd day of May, 2005.


Suzanne Lee Elliott
Attorney for Eastmond
WSBA 12634

CERTIFICATE OF SERVICE BY MAIL

I declare under penalty of perjury that on May 3, 2005, I placed a copy of this document in the U.S. Mail, postage prepaid, to Constance Crawley, 3000 Rockefeller Everett, WA 98201-4060.


Suzanne Lee Elliott

APPENDIX 1

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

vs.

JAMES TAYLOR EASTMOND,

Defendant.

No. 00-1-00227-5

VERDICT FORM A

Filed in Open Court

11-17 2000 4:00

PAM L. DANIELS
COUNTY CLERK

By W. Hale
Deputy Clerk

We, the jury, find the defendant, James Taylor Eastmond,

GUILTY

(write in not guilty or guilty)

of the crime of First Degree Robbery,

as charged in Count 1.

Michael R. Swake
Presiding Juror

101

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR SNOHOMISH COUNTY

Filed in Open Court

11-17 2000

PAM L. DANIELS
COUNTY CLERK

By M. Pale
Deputy Clerk

THE STATE OF WASHINGTON,

Plaintiff,

vs.

JAMES TAYLOR EASTMOND,

Defendant.

No. 00-1-00227-5

SPECIAL VERDICT FORM A

We, the jury, return a special verdict by answering as follows:

Was the defendant, James Taylor Eastmond, armed with a deadly weapon at the
time of the commission of the crime in Count 1?

ANSWER:

Yes

(Yes or No)

Michael R. Swale
Presiding Juror

13
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APPENDIX 2

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

vs.

JAMES TAYLOR EASTMOND,

Defendant.

No. 00-1-00227-5

VERDICT FORM B

Filed in Open Court

11-17 2000

PAM L. DANIELS
COUNTY CLERK

By Wale
Deputy Clerk

We, the jury, find the defendant, James Taylor Eastmond,

GUILTY of the crime of First Degree Burglary,
(write in not guilty or guilty)

as charged in Count II.

Michael R. Swale
Presiding Juror

10
102

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR SNOHOMISH COUNTY

Filed in Open Court

11-17 20 00

PAM L. DANIEL 4:00
COUNTY CLERK

By Alpole
Deputy Clerk

THE STATE OF WASHINGTON,

Plaintiff,

vs.

JAMES TAYLOR EASTMOND,

Defendant.

No. 00-1-00227-5

SPECIAL VERDICT FORM B

We, the jury, return a special verdict by answering as follows:

Was the defendant, James Taylor Eastmond, armed with a deadly weapon at the
time of the commission of the crime in Count II?

ANSWER:

Yes
(Yes or No)

Michael R. Swank
Presiding Juror

11/17/00

APPENDIX 3

FILED

JAN 20 2004

PAM L. DANIELS
SNOHOMISH COUNTY CLERK
EX-OFFICIO CLERK OF COURT

**CERTIFIED
COPY**

2004 JAN 21 A 9:39

R.R. BART
SNOHOMISH CO. SHERIFF
EVERETT WA

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

EASTMOND, JAMES TAYLOR

Defendant.

SID: WA19545109

If no SID, use DOB: 10/17/1980

No. 00-1-00227-5

JUDGMENT AND SENTENCE

- ☒ Prison
☐ Jail One Year or Less
☐ First Time Offender
☐ Special Sexual Offender
Sentencing Alternative
☐ Special Drug Offender Sentencing Alternative
☒ Clerk's Action Required,
restraining order entered para. 4.3
☒ Clerk's action required
firearms rights revoked, para. 4.3 and 5.6
☐ Clerk's action required, para 5.4
Restitution Hearing set.

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on November 17, 2000 by jury-verdict of:

COUNT	CRIME	RCW	INCIDENT #	DATE OF CRIME
I	First Degree Robbery	9A.56.200	SSO, 0000509	12/30/99
II	First Degree Burglary	9A.52.020	SSO, 0000509	12/30/99

as charged in the Amended Information.

[] Additional current offenses are attached in Appendix 2.1.

- ☒ A special verdict/finding for use of a deadly weapon which was a firearm was returned on Count(s) I and II RCW 9.94A.602, 510.; 9.41.010.
- ☐ A special verdict/finding for use of deadly weapon which was not a firearm was returned on Count(s) _____ RCW 9.94A.602,510.
- ☐ A special verdict/finding of sexual motivation was returned on Count(s) _____ RCW 9.94A.835.
- ☐ A special verdict/finding for Violation of the Uniform Controlled Substances Act was returned on Count(s) _____ RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, in a public transit vehicle, or in a public transit stop shelter.; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- ☐ A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture was returned on Count(s) _____ RCW 9.94A, RCW 69.50.401(a), RCW 69.50.440.
- ☐ The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030(45)
- ☐ This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- ☐ The court finds that the offender has a chemical dependency which contributed to the offense and imposes as a condition of sentence that defendant shall participate in the rehabilitative program/affirmative conduct: _____
- RCW 9.94A.607.
- ☐ The crime charged in Count(s) _____ involve(s) domestic violence.
- ☐ The offense in Count(s) _____ was committed in a county jail or state correctional facility. RCW 9.94A.510(5).
- ☐ The court finds that in Count _____ a motor vehicle was used in the commission of this felony. The Department of Licensing shall revoke the defendant's driver's license. RCW 46.20.285.
- ☐ Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- ☐ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME
1 Second Degree Unlawful Possession of Firearm	03/05/98	Snohomish County, WA		J	Felony
2 Second Degree Possession of Stolen Property	03/05/98	Snohomish County, WA		J	Felony

- ☐ Additional criminal history is attached in Appendix 2.2.
- ☐ The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

- [] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- [] The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUS. LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	CSM 8	IX 36-48	48-64 months CSM	60 mos	156 - 168 mos	Life
II	8	VII 21-27	31-41 months CSM	60 mos	141 - 147	Life

*Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile Present

- [] Additional current offense sentencing data is attached in Appendix 2.3.

2.4 [] **EXCEPTIONAL SENTENCE** [For Determinate Sentence]. Substantial and compelling reasons exist which justify an exceptional sentence [] above [] within [] below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The prosecuting attorney [] did [] did not recommend a similar sentence.

[] **EXCEPTIONAL MINIMUM TERM** [For Maximum and Minimum Term Sentence] Substantial and compelling reasons exist which justify an exceptional minimum term [] above [] within [] below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The prosecuting attorney [] did [] did not recommend a similar sentence.

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753

[] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142):

2.6 The prosecutor's recommendation was 166 months/days on Count 1, 151 months/days on Count 2, _____. The prosecutor recommended counts 1, II run concurrently/consecutively.

except for weapon enhancements

* Court does not apply Anti-Merger Statute

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 ☐ The Court DISMISSES Counts _____

3.3 ☐ The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: ~~exp~~ *All Financial conditions same as imposed in original judgement & sentence*

\$ 0 Restitution to: _____

JASS CODE \$ _____ Restitution to: _____

RTN/RJN \$ _____ Restitution to: _____

(Name and Address—address may be withheld and provided confidentially to Clerk's Office).

RMA \$15/\$25/\$50 Restitution Monitoring Fee SCC 4.94.010
The Clerk shall collect this fee before collecting restitution or any other assessed legal financial obligations. RCW 9.94A.760

PCV \$100/\$500 Victim assessment RCW 7.68.035
\$100.00 crimes committed prior to June 6, 1996.
\$500.00 crimes committed on or after June 6, 1996.

CRC \$ waived Court costs, including RCW 9.94A.030, 9.94A.505, 10.01.160, 10.46.190
Criminal filing fee \$ _____ FRC
Witness costs \$ _____ WFR
Sheriff service fees \$ _____ SFR/SFS/SFW/SRF
Jury demand fee \$ _____ JFR
Other \$ _____

PUB \$790 Fees for court appointed attorney RCW 9.94A.030
PUB \$790, 620, 530 Fees for all appointed conflict cases RCW 9.94A.030
WFR \$ Court appointed defense expert and other defense costs RCW 9.94A.030
FCM \$ Fine RCW 9A.20.021; ☐ VUCSA additional fine deferred due to indigency RCW 69.50.430
Drug enforcement fund of _____ RCW 9.94A.030

CDF/DOV \$ _____
FCD/NTF/SAD/SDI \$ _____
CLF \$ _____
EXT \$ _____
Crime lab fee ☐ deferred due to indigency RCW 43.43.690
Extradition costs RCW 9.94A.505

Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) RCW 38.52.430
Biological Sample Fee RCW 43.43.7541
Other costs for: _____
TOTAL RCW 9.94A.760

☐ The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753.

☐ RESTITUTION. Schedule attached, Appendix 4.1.

☐ Restitution ordered above shall be paid jointly and severally with:

NAME of other defendant CAUSE NUMBER (Victim name) (Amount-\$)

RJN _____

- ☐ The Department of Corrections may immediately issue a Notice of Payroll Deduction.
RCW 9.94A.7602

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here: Not less than

\$ _____ per month commencing _____
RCW 9.94A.760
All payments shall be made within 24 months of: ☒ release of confinement;
☐ entry of judgment; ☐ Other _____

- ☐ In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.760
☐ The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.
☐ The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.

- 4.2 ☐ HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. The defendant, if out of custody, shall report to the HIV/AIDS Program Office at 3020 Rucker, Suite 206, Everett, WA 98201 within one (1) hour of this order to arrange for the test. RCW 70.24.340

☒ DNA TESTING. The defendant shall have a blood sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or Department of Corrections, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

- 4.3 The defendant shall not have contact with Thomas Gibling including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life years (not to exceed the maximum statutory sentence). EVEN IF THE PERSON WHO THIS ORDER PROTECTS INVITES OR ALLOWS CONTACT, YOU CAN BE ARRESTED AND PROSECUTED. ONLY THE COURT CAN CHANGE THIS ORDER. YOU HAVE THE SOLE RESPONSIBILITY TO AVOID OR REFRAIN FROM VIOLATING THIS ORDER.

- ☐ (Check for any domestic violence crime as defined by RCW 10.99.020(3)): VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST. ANY ASSAULT, DRIVE-BY SHOOTING, OR RECKLESS ENDANGERMENT THAT IS A VIOLATION OF THIS ORDER IS A FELONY. RCW 10.99.050.

- ☐ (Check for any harassment crime as defined by RCW 9A.46.060): VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER CHAPTER 9A.46 AND WILL SUBJECT A VIOLATOR TO ARREST. RCW 9A.46.080.

- ☐ (For Domestic Violence orders only:) The clerk of the court shall forward a copy of this order on or before the next judicial day to the _____ County Sheriff's Office or _____ Police Department (where the protected person above-named lives), which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

- 4.4 OTHER: All conditions other than prison sentence in DOC the same as in original judgement and sentence

4.5 CONFINEMENT OVER ONE YEAR.

CONFINEMENT [Determinate Sentences]. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

36 mos + 60 mos months on Count I

21 mos + 60 mos months on Count II

CONFINEMENT [Maximum Term And Minimum Term]. Defendant is sentenced to total confinement as follows. The maximum and minimum terms of confinement shall be served in a facility or institution operated, or utilized under contract, by the State of Washington.

Count ____: maximum term of ____ years AND minimum term of ____ months

Count ____: maximum term of ____ years AND minimum term of ____ months

FURTHER PROVISIONS APPLICABLE TO ALL SENTENCES:

The minimum term of actual total confinement ordered on all counts cumulatively is 156 months ^{CSM}
(Add mandatory firearm and deadly weapon enhancement time to run consecutively to other counts. See Sec. 2.3, Sentence Data above.)

The maximum term of total confinement ordered on all counts cumulatively is 156 months

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589

Confinement shall commence immediately unless otherwise set forth here: _____

The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____

4.6

☒ COMMUNITY PLACEMENT [For Determinate Sentences] is ordered as follows: Count I for 12 months; Count II for 12 mos months; Count ____ for ____ months.

☐ COMMUNITY CUSTODY RANGE [For Determinate Sentences] is ordered as follows:

Count ____ for a range from ____ to ____ months;
Count ____ for a range from ____ to ____ months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A for community placement offenses -- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

☐ **COMMUNITY CUSTODY [For Maximum And Minimum Term Sentences]:** For each count, the defendant is sentenced to community custody under the supervision of the Department of Corrections (DOC) and the authority of the Indeterminate Sentence Review Board for any period of time that the defendant is released from total confinement before expiration of the maximum sentence. In addition to other conditions, the defendant shall comply with any conditions imposed by the Indeterminate Sentence Review Board under RCW 9.94A.713; 9.95.420, .425, .430, .435.

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

☐ The defendant shall not consume any alcohol.

☐ Defendant shall have no contact with: _____

☐ Defendant shall remain ☐ within ☐ outside of a specific geographical boundary, to wit: _____

☐ The defendant shall participate in the following crime-related treatment or counseling services: _____

☐ The defendant shall undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse ☐ mental health

☐ anger management and fully comply with all recommended treatment.

☐ The defendant shall comply with the following crime-related prohibitions: _____

Other conditions may be imposed by the court or DOC during community custody, or are set forth here:

4.7 [] **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections:

4.9 Unless otherwise ordered, all conditions of this sentence shall remain in effect notwithstanding any appeal.

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.753(4); RCW 9.94A.760 and RCW 9.94A.505(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in paragraph 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7606.
- 5.4 **RESTITUTION HEARING.**
☐ Defendant waives any right to be present at any restitution hearing (sign initials): _____
☐ Defendant waives any right to a restitution hearing within 6 months RCW 9.94A.750.
☐ A restitution hearing shall be set for _____
The Prosecutor shall provide a copy of the proposed restitution order and supporting affidavit(s) of victim(s) 21 judicial days prior to the date set for said restitution hearing. The defendant's presence at said restitution hearing may be excused only if a copy of the proposed restitution order is signed by both defendant and defense counsel and returned to the Court and Prosecutor no later than 10 judicial days prior to said hearing.
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634

Cross off if not applicable:

5.6 **FIREARMS.** You may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment): RCW 9.41.040, 9.41.047

If this is a crime enumerated in RCW 9.41.040 which makes you ineligible to possess a firearm, you must surrender any concealed pistol license at this time, if you have not already done so.

(Pursuant to RCW 9.41.047(1), the Judge shall read this section to the defendant in open court. The Clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the department of licensing along with the date of conviction).

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.575, 10.01.200. Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent), you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must

register within 24 hours of your release.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this State's Department of Corrections.

If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier.

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 14 days after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report in person to the sheriff of the county where you are registered on a weekly basis if you have been classified as a risk level II or III, or on a monthly basis if you have been classified as a risk level I. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level. If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

Cross off if not applicable:

5.8. **RIGHT TO APPEAL.** If you plead not guilty, you have a right to appeal this conviction. If the sentence imposed was outside of the standard sentencing range, you also have a right to appeal the sentence.

This right must be exercised by filing a notice of appeal with the clerk of this court within 30 days from today. If a notice of appeal is not filed within this time, the right to appeal is IRREVOCABLY WAIVED.

If you are without counsel, the clerk will supply you with an appeal form on your request, and will file the form when you complete it.

If you are unable to pay the costs of the appeal, the court will appoint counsel to represent you, and the portions of the record necessary for the appeal will be prepared at public expense.

5.9 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: January 16, 2003

Gerald L. Knight
JUDGE
Print name: GERALD L. KNIGHT

Craig S. Matheson
CRAIG S. MATHESON, #18556
Deputy Prosecuting Attorney

Brian Reed Phillips
BRIAN REED PHILLIPS, #9374
Attorney for Defendant

James Taylor Eastmond
JAMES TAYLOR EASTMOND
Defendant

Interpreter signature/Print name: _____
I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____
language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that
language.
CAUSE NUMBER of this case: 00-1-00227-5

I, Pam L. Daniels, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and
Sentence in the above-entitled action, now on record in this office.

JAN 20 2004

WITNESS my hand and seal of the said Superior Court affixed this date: _____

Clerk of said County and State, K. Glendon, Deputy Clerk

ORDER OF COMMITMENT

THE STATE OF WASHINGTON to the Sheriff of the County of Snohomish; State of Washington, and to the Secretary of the Department of Corrections, and the Superintendent of the Washington Corrections Center of the State of Washington, GREETINGS:

WHEREAS, JAMES TAYLOR EASTMOND, has been duly convicted of the crime(s) of as charged in the Amended Information filed in the Superior Court of the State of Washington, in and for the County of Snohomish, and judgment has been pronounced against him/her that he/she be punished therefore by imprisonment in such correctional institution under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections pursuant to RCW 72.02.210, for the term(s) as provided in the judgment which is incorporated by reference, all of which appears of record in this court; a certified copy of said judgment being endorsed hereon and made a part thereof, Now, Therefore,

THIS IS TO COMMAND YOU, the said Sheriff, to detain the said defendant until called for by the officer authorized to conduct him to the Washington Corrections Center at Shelton, Washington, in Mason County, and this is to command you, the said Superintendent and Officers in charge of said Washington Corrections Center to receive from the said officers the said defendant for confinement, classification, and placement in such corrections facilities under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections.

And these presents shall be authority for the same. HEREIN FAIL NOT.

WITNESS the Honorable Gerald L. Knight, Judge of the said Superior Court and the seal thereof, this 16th day of January, 2008.4

Pam L. Daniels
CLERK OF THE SUPERIOR COURT

By: Nancy Albert
Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. WA19545109
(If no SID take fingerprint card for State Patrol)

Date of Birth: 10/17/1980

FBI No. _____

Local ID No. _____

PCN No. _____

DOC 821591

Alias name, SSN, DOB: _____

Race: White

Ethnicity:

Sex: M

☐ Hispanic

☐ Non-Hispanic

Height: 6'0

Weight: 140

Hair: Brown

Eyes: Hazel

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature thereto. Clerk of the Court: Nancy Albert, Deputy Clerk.
Dated: 1-16-2024

DEFENDANT'S SIGNATURE: [Signature]

ADDRESS: _____

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously

Judgment and Sentence (Felony Over One Year) Page 12 of 24
St. v. EASTMOND, JAMES TAYLOR
PA#00F0024

Snohomish County Prosecuting Attorney
S:\felony\forms\sentence\over.mrg
VIO/CSM/caw

APPENDIX A TO PLEA AGREEMENT
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY
(SENTENCING REFORM ACT)

DATE: December 22, 2003 (da/gp/dhw)
DEFENDANT: **EASTMOND, James Taylor**

DOB: 10/17/80 W/M

SID: WA19545109 FBI: 231741MB6 DOC: 821591 DOL: EASTM-JT-207PP

<u>CRIME</u>	<u>DATE OF CONVICTION</u>	<u>PLACE OF CONVICTION</u>	<u>Incarceration/Probation DISPOSITION</u>
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ADULT FELONIES:

None

ADULT MISDEMEANORS:

1. No Valid License/Expired License	12/21/98	Oregon
2. No Valid License/Expired License	1/18/99	Snohomish County
3. No Valid License/Expired License	1/26/99	Snohomish County
4. Driving While Suspended/Revoked	7/15/98	Snohomish County
5. Driving While Suspended/Revoked	7/19/99	Snohomish County
6. Possession Drug Paraphernalia	2/8/00	Utah
7. VUCSA - Possession	2/8/00	Utah

JUVENILE FELONIES:

*Take Motor Vehicle w/o Permission	8/29/95	Snohomish County	Community Supervision
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*Conviction "washes" Defendant was Under Age 15 on the Date of Offense

**Second Degree Unlawful Possession of Firearm	3/5/98	Snohomish County	Community Supervision
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**Second Degree Poss. Stolen Property	3/5/98	Snohomish County	Detention
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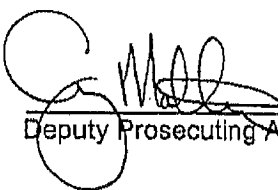
**Court Ordered Sentences to Run Consecutive

JUVENILE SERIOUS TRAFFIC:

None.

OTHER: (NOT COUNTED AS CRIMINAL HISTORY)

DATE 1/16/04


Deputy Prosecuting Attorney/WSBA # 10554